OUTCOME OF PROCEEDINGS

of: Working Party on Economic Questions (Data Protection)
on: 29 and 30 May 1994

No. prev. doc.: 7500/94 ECO 143
No. Cion prop.: 9400/92 ECO 221

Subject: Amended proposal for a Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data

The Working Party completed its second reading of the above proposal at its meeting on 29 and 30 May 1994 (1).

The results of the meeting are summarized below.

(1) The consolidated document has been revised to show the draft Directive as it stands following the second reading: see 6285/2/94 REV 2.
1. **Articles 28 and 29: codes of conduct**

   The discussion was based on a text submitted by the Presidency (see 7003/94, p. 3) which simplified these provisions and amalgamated them into one Article.

   There was a broad consensus on the text, subject to the following comments:

   - some delegations (UK in particular) felt that it should be made clear that the Commission and the Member States would not have to be dealing with the same parties, as the Commission should not encourage the preparation of national codes;
   - E and I wanted the text to allow large undertakings to draw up codes;
   - D did not want the Community codes to be necessarily published in the Official Journal;
   - I stressed that it was the responsibility of trade organizations to draw up codes;
   - several delegations raised objections regarding the evaluation of the representative nature of organizations which drew up a code;
   - D called for it to be optional for the supervisory authority to issue an opinion on codes submitted to it;
   - P requested that it be compulsory for organizations which drew up a code to submit it to the supervisory authority.

   The Presidency amended the text of its proposal following the meeting, the new text being set out in the latest version of the consolidated text (in addition, recitals 27 and 28 were amended).

2. **Article 25: sanctions**

   There was a very broad consensus on the new text submitted by the Presidency (7003/94, p. 2).
The Italian and English versions will have to be corrected (introduction of the expression "appropriate measures" in Italian and replacement of "penalties" by "sanctions" in English). Moreover, the word "dissuasive" will not appear in the text.

3. Article 22: judicial remedies

- **NL** questioned the need for this Article;

- **DK and UK** objected to Member States having the possibility of providing for a compulsory administrative remedy before the supervisory authority before being able to seek a judicial remedy.

4. Article 23: liability

**B/F/L/I and P** (I submitted a text similar to, but shorter than, that of the Presidency) supported the principle of the text submitted by the Presidency (7003/94, p. 2).

The **DK/D/IRL/NL and UK** delegations maintained scrutiny reservations on the Presidency text.

However, the discussion on this point established the principle of liability resulting from damage caused by an unlawful processing operation (whether or not resulting from an error on the part of the controller), unless the controller could avoid liability by proving that the occurrence causing the damage was not attributable to him.

The Presidency amended recital 24 to take account of the discussion, the new wording being contained in the latest version of the consolidated document.
5. Article 15: right to object

- Although endorsed by several delegations (B/F/E/L and P), the general right to object was still opposed by other delegations, which either failed to see its usefulness (D) or felt that it would result in excessive bureaucracy by allowing people to object to all processing, thus obliging controllers to give rulings on such objections (DK/IRL and UK).

  The Commission put forward a proposal on the text during the meeting and also suggested that the scope of the right be limited to the cases referred to in Article 7(e) and (f), i.e. to processing based on the public interest and the balance of interests.

- The D/DK/IRL/NL and UK delegations were opposed to the aggregation of opt-out rights, although all the other delegations could agree to it.

Following the discussion the Presidency drafted a new text of the Article, which has been incorporated in the latest version of the consolidated text.

6. Article 16: automated decisions

This Article elicited the following reactions:

- F requested, without the support of the other delegations, that the text should refer to "a profile or a personality" instead of "a personality profile"; B, however, proposed that the latter term be deleted, as it would mean an excessively large extension of the scope;

- while reserving its position, D stated that it attached importance to this Article, especially in the social field;
– the DK/IRL and UK delegations disputed the relevance of this provision to the Directive, whilst acknowledging that it could be derived from the principle of "fair processing";

– I requested that this Article be kept to a minimum;

– for the sake of clarity in the French text the words "décision faisant grief" ("decision adversely affecting him") will be replaced by "décision produisant des effets juridiques à l'égard de la personne" ("decision having a legal effect on the person").

The discussion also made it possible to eliminate false examples of automated decisions which might come within the scope of this Article, such as use of a credit card beyond the limit authorized by the finance company.

Following the discussion the Presidency drafted a new text, which has been incorporated in the latest version of the consolidated text.

7. Miscellaneous points

– **Definition of the manual file**: further to an NL request, it was decided to enter a statement in the minutes to the effect that manual files generally covered data concerning more than one person.

– **Definition of "recipient" and "third party"**: 5 delegations (DK/D/IRL/NL and UK) still preferred the use of "third party" with regard to the information to be given to persons and the supervisory authority. In the light of a request by F, it was proposed that the definition of "recipient" should exclude authorities to which data were communicated in the context of a specific supervisory operation.
Following the meeting the Presidency draw up a new definition of "recipient", which is set out in the latest consolidated document.

- **Applicable national law**: the Working Party agreed to ask the Council Legal Service for an opinion on the matter.

- **Article 26(4a)**: **UK** pointed out that it had formally asked the Council Legal Service to examine whether the role envisaged for the Commission in this Article was compatible with Article 113 of the Treaty;